

§ 15.109 How will HUD respond to a request for information from Form HUD-92410 (Statement of Profit and Loss)?

(a) *To whom will HUD disclose the information?* HUD will release information from Form HUD-92410 (or a HUD approved substitute form that the mortgagor may have submitted) only to eligible potential purchasers and only during the period specified by HUD for the mortgage sale.

(b) *Under what conditions will HUD release such information?* HUD will release the information only if all of the following three conditions are met:

(1) The information concerns a project that is subject to a HUD-held mortgage which HUD is selling under the authority of sections 207 (k) and (l) of the National Housing Act (12 U.S.C. 1713 (k) and (l)) or section 7(i)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(3)).

(2) The eligible potential purchasers have agreed to:

- (i) Keep the information confidential;
- (ii) Disclose the information only to potential investors in the mortgage and only for the period specified by HUD for the mortgage sale and to notify those potential purchasers of their obligations under this section;
- (iii) Use the information only to evaluate the mortgage in connection with the mortgage sale; and
- (iv) To follow disclosure procedures for that sale that have been established by the Secretary.

(3) The potential investors in the mortgage have agreed to keep the information confidential and to use the information only to evaluate the mortgage in connection with their investment decision.

(c) *To whom may potential investors disclose such information?* Potential investors in the mortgage may disclose the information to other entities only if the disclosure is:

- (1) Necessary for the investor's evaluation of the mortgage;
- (2) Made in accordance with disclosure procedures for the specific sale that have been established by HUD; and
- (3) Limited to the period specified by HUD for the mortgage sale.

(d) *What sanctions are available for improper disclosure of such information?* An eligible potential purchaser or a potential investor (who has received the information from a potential purchaser and has been notified by that entity of its obligations under paragraph (b) of this section), who discloses information from Form HUD-92410 in violation of this section, may be subject to sanctions under part 24 of this title.

§ 15.110 What fees will HUD charge?

(a) *How will HUD determine your fee?* HUD will determine your fee based on which category of requester you are in and on the other provisions of this section. With your request, you should submit information to help HUD determine the proper category. If HUD cannot tell from your request, or if HUD has reason to doubt the use to which the records will be put, HUD will ask you to provide additional information before assigning the request to a specific category.

(b) *What are the categories of requesters?*—(1) *Commercial use requester.* You are a commercial use requester if you request information for a use or purpose that furthers your commercial, trade, or profit interests or those interests of the person on whose behalf you have made the request. In determining whether your request properly belongs in this category, HUD determines the use to which you will put the documents requested.

(2) *Educational requester.* You are an educational requester if your request is on behalf of an educational institution and you do not seek the records for a commercial use, but to further scholarly research.

(3) *Non-commercial scientific requester.* You are a non-commercial scientific requester if you are not a commercial use requester and your request is on behalf of an organization that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(4) *Representative of the news media requester.* (i) You are a representative of the news media requester if you actively gather news for an entity that is primarily organized and operated to

§ 15.110

24 CFR Subtitle A (4-1-07 Edition)

publish or broadcast news to the public.

(ii) Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public.

(iii) Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but HUD may also look to the past publication record of a requester in making this determination.

(iv) If you are a representative of the news media requester, HUD will not consider you to be a commercial use requester.

(5) *Other requester.* You are considered an "other" requester if you do not fall within the categories of requesters described in this paragraph (b).

(c) *FOIA Fee Schedule.* The following table sets out the Fee Schedule that HUD uses to determine your fee. The rates for professional and clerical search and review includes the salary of the employee performing the work. The duplication cost includes the cost of operating duplicating machinery. The computer run time includes the cost of operating a central processing unit for that portion of the operating time attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search. HUD's fee schedule does not include overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

FOIA FEE SCHEDULE

Activity	Rate	Commercial use requester	News media, educational research, or scientific research requester	Other requester
(1) Professional search	\$37.00 per hour	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
(2) Professional review	\$37.00 per hour	Applies	Does not apply	Does not apply.
(3) Clerical search	\$16.35 per hour	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
(4) Clerical review	\$16.35 per hour	Applies	Does not apply	Does not apply.
(5) Programming services.	\$35.00 per hour	Applies	Does not apply	Applies.
(6) Computer run time (includes only main-frame search time not printing).	The direct cost of conducting the search.	Applies	Does not apply	Applies.
(7) Duplication costs	\$0.15 per page	Applies	Applies. No charge for first 100 pages.	Applies. No charge for first 100 pages.
(8) Duplication costs—tape, CD ROM or diskette.	Actual Cost	Applies	Applies	Applies.

(d) *How does HUD assess review charges?* HUD will assess review charges only for the first time it analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for its review at the administrative appeal level of an exemption already applied. If HUD has withheld in full a record or portions of a record under an exemption which is subsequently determined not to apply, HUD will assess

charges for its review to determine the applicability of other exemptions not previously considered.

(e) *How does HUD handle multiple requests?* If you, or others acting with you, make multiple requests at or about the same time for the purpose of dividing one request into a series of requests for the purpose of evading the assessment of fees, HUD will aggregate your requests for records. In no case will HUD give you more than the first

Office of the Secretary, HUD

§ 15.110, Nt.

two hours of search time, or more than the first 100 pages of duplication without charge.

(f) *Unsuccessful searches.* If HUD's search for records is unsuccessful, HUD will still bill you for the search.

(g) *No charge for costs under \$25.* HUD will not charge you a fee if the total amount calculated under this section is less than \$25.00.

(h) *Reducing fees in the public interest.* If HUD determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that you are not seeking the information for your own commercial interests, HUD may waive or reduce the fee.

(i) *When do I pay the fee?* HUD will bill you when it responds to your request. You must pay within thirty-one calendar days. If the fee is more than \$250.00 or you have a history of failing to pay FOIA fees in a timely manner, HUD will ask you to remit the estimated amount and any past due charges before sending you the records.

(j) *What happens if I do not pay the fees?* (1) If you do not pay by the thirty-first day after the billing date, HUD will charge interest at the maximum rate allowed under 31 U.S.C. 3717.

(2) If you do not pay the amount due within ninety calendar days of the due date, HUD may notify consumer credit reporting agencies of your delinquency.

(3) If you owe fees for previous FOIA responses, HUD will not respond to further requests unless you pay the amount due.

(k) *Contract services.* HUD will contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient method.

When doing so HUD will charge the cost to the requester that the private sector source has charged HUD for performing these tasks. In some instances, these costs may be higher than the charges HUD would ordinarily charge if the processing tasks had been done by the agency itself. In no case will HUD contract out responsibilities which the FOIA provides that HUD alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. HUD will ensure that, when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the National Technical Information Service, HUD will inform requesters of the steps necessary to obtain records from those sources. Information provided routinely in the normal course of business will be provided at no charge.

EFFECTIVE DATE NOTE: At 72 FR 12541, Mar. 15, 2007, §15.110 was amended by revising paragraph (b)(4)(i), the chart captioned "FOIA Fee Schedule" in paragraph (c), paragraphs (h) and (i), and in paragraph (k), remove the first three sentences and add two new sentences in their place, effective Apr. 16, 2007. For the convenience of the user, the added and revised text is set forth as follows:

§ 15.110 What fees will HUD charge?

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(b) * * *

(4) * * *

(i) You are a representative of the news media requester if you actively gather news for an entity that is organized and operated to publish or broadcast news to the public.

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(c) * * *

FOIA FEE SCHEDULE

Activity	Rate	Commercial use requester	News media, educational research, or scientific research requester	Other requester
(1) Professional search	Actual salary rate of employee involved, plus 16 percent of salary rate.	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
(2) Professional review	Actual salary rate of employee involved, plus 16 percent of salary rate.	Applies	Does not apply	Does not apply.

FOIA FEE SCHEDULE—Continued

Activity	Rate	Commercial use requester	News media, educational research, or scientific research requester	Other requester
(3) Clerical search	Actual salary rate of employee involved, plus 16 percent of salary rate.	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
(4) Clerical review	Actual salary rate of employee involved, plus 16 percent of salary rate.	Applies	Does not apply	Does not apply.
(5) Programming services.	\$35 per hour	Applies	Does not apply	Applies.
(6) Computer run time (includes only main-frame search time not printing).	The direct cost of conducting the search.	Applies	Does not apply	Applies.
(7) Duplication costs	\$0.18 per page	Applies	Applies. No charge for first 100 pages.	Applies. No charge for first 100 pages.
(8) Duplication costs—tape, CD ROM or diskette.	Actual cost	Applies	Applies	Applies.

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(h) *Waiver or reduction of fees in the public interest.* If HUD determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government, and that you are not seeking the information primarily for your own commercial interests, HUD may waive or reduce the fee.

(i) In order to qualify for a waiver or a reduction of fees, a requester must make the following demonstrations in the FOIA request:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government.

(A) *The subject of the request pertains to the operations or activities of the Federal Government.* Requesters must be seeking documents and records that contain information regarding identifiable operations or activities of the Federal Government. The connection between the content of the records and Federal governmental operations or activities must be direct and clear.

(B) *The informative value of the information to be disclosed is consequential.* The disclosable portions of the requested records must be meaningfully informative about Federal Governmental operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that is already in the public domain, in either a duplicative or substantially identical form, would not be as likely to contribute

to the public’s understanding of Federal governmental operations or activities.

(C) *The disclosure is likely to contribute to an understanding of the subject by the public.* The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester, in order to provide a great benefit to the public at large. A requester’s expertise in the subject area and ability and intention to effectively convey the information will be considered.

(D) *The contribution to public understanding is significant.* The public’s understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a substantial degree. HUD will not make value judgments about whether the information to be disclosed is worthy or important enough to be made public, but rather whether it would contribute substantially to public understanding of the operations or activities of the government.

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(A) *The existence and magnitude of a commercial interest.* The requester must describe and explain any commercial interest that would be furthered by the requested disclosure, whether personally benefiting the requester or any person on whose behalf the requester may be acting. See the definition of a “commercial use requester” in paragraph (b)(1) of this section for further explanation.

(B) *Primary interest in disclosure.* A fee waiver or reduction in fees is justified where the requester has demonstrated that the public interest in disclosure is greater in magnitude

than that of any identified commercial interest in disclosure. However, disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(2) Requests for waivers must address the elements listed in paragraph (h)(1) of this section, insofar as they apply to each request. HUD will exercise its discretion in considering the cost-effectiveness of its investment of administrative resources in deciding whether to grant waivers or reductions of fees, in consultation with appropriate offices as needed. Requests for the waiver or reduction of fees must be submitted with the request.

(3) When only some of the requested records satisfy the requirements for a waiver of fees, a waiver will be granted for only those records.

(4) When a fee waiver request is denied, HUD will do no further work on the request until it receives an assurance of payment, or an appeal of the fee waiver adverse determination is filed and HUD has made a final appeal determination pursuant to § 15.112.

(i) *When do I pay the fee?* HUD will bill you when it responds to your request. You must pay within 31 calendar days. If the estimated fee is more than \$250.00 or you have a history of failing to pay FOIA fees to HUD in a timely manner, HUD will ask you to remit the estimated amount and any past due charges before processing and sending you the records.

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(k) *Contract services.* HUD will contract with private sector sources to locate, reproduce, and disseminate records in response to FOIA requests when that is the most efficient and least costly method. HUD will ensure that the ultimate cost to the requester is no greater than it would be if the agency itself had performed these tasks.

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§ 15.111 How do I appeal a denial of my request for records or a fee determination?

(a) *To what address do I submit my appeals?* You must submit your appeal, in writing, to the address specified in HUD's notice responding to your FOIA request (see § 15.106(a)(2)(iv)). If you send your appeal to the wrong HUD office, that office will forward it to the correct office. That office will also notify you that it has so forwarded your appeal and advise you that, for processing purposes, the time of receipt

will be when the appropriate office receives your appeal.

(b) *How much time do I have to submit an appeal?* Your written appeal must be postmarked within 30 calendar days of the date of the HUD determination from which you are appealing. If your appeal is transmitted by other than the United States Postal Service (i.e., facsimile, messenger or delivery service) it must be received in the appropriate office by close of business on the 30th calendar day after the date of the HUD determination.

(c) *What information must I provide if I am appealing a denial of request for information?* If you are appealing a denial of your request for information, the appeal must contain the following information:

- (1) A copy of your original request;
- (2) A copy of the written denial of your request; and
- (3) Your statement of the facts and legal arguments supporting disclosure.

(d) *What information must I provide if I am appealing a fee determination?* If you are appealing a fee determination, including a denial of your request for HUD to waive the fee, the appeal must contain the following information:

- (1) The address of the office which made the fee determination from which you are appealing;
- (2) The fee that office charged;
- (3) The fee, if any, you believe should have been charged;
- (4) The reasons you believe that your fee should be lower than the fee which the Agency charged or should have been waived; and
- (5) A copy of the initial fee determination and copies of any correspondence concerning the fee.

(e) *What information must I provide if I am appealing a denial of expedited processing?* If you are appealing a denial of your request for expedited processing, your appeal must contain the following information:

- (1) A copy of your original request;
- (2) A copy of the written denial of your request; and
- (3) Your statement of the facts and legal arguments supporting expedited processing.